

may choose to contract with a registered futures association or another registered entity, as such terms are defined under the Act, or the Financial Industry Regulatory Authority (collectively, “regulatory service providers”), for the provision of services to assist in complying with the Act and Commission regulations thereunder, as approved by the Commission. Any swap execution facility that chooses to contract with a regulatory service provider shall ensure that such provider has the capacity and resources necessary to provide timely and effective regulatory services, including adequate staff and automated surveillance systems. A swap execution facility shall at all times remain responsible for the performance of any regulatory services received, for compliance with the swap execution facility’s obligations under the Act and Commission regulations, and for the regulatory service provider’s performance on its behalf.

(b) *Duty to supervise regulatory service provider.* A swap execution facility that elects to use the service of a regulatory service provider shall retain sufficient compliance staff to supervise the quality and effectiveness of the regulatory services provided on its behalf. Compliance staff of the swap execution facility shall hold regular meetings with the regulatory service provider to discuss ongoing investigations, trading patterns, market participants, and any other matters of regulatory concern. A swap execution facility shall also conduct periodic reviews of the adequacy and effectiveness of services provided on its behalf. Such reviews shall be documented carefully and made available to the Commission upon request.

(c) *Regulatory decisions required from the swap execution facility.* A swap execution facility that elects to use the service of a regulatory service provider shall retain exclusive authority in all substantive decisions made by its regulatory service provider, including, but not limited to, decisions involving the cancellation of trades, the issuance of disciplinary charges against members or market participants, and denials of access to the trading platform for disciplinary reasons. A swap execution facility shall document any instances where its actions differ from those rec-

ommended by its regulatory service provider, including the reasons for the course of action recommended by the regulatory service provider and the reasons why the swap execution facility chose a different course of action.

#### § 37.205 Audit trail.

A swap execution facility shall establish procedures to capture and retain information that may be used in establishing whether rule violations have occurred.

(a) *Audit trail required.* A swap execution facility shall capture and retain all audit trail data necessary to detect, investigate, and prevent customer and market abuses. Such data shall be sufficient to reconstruct all indications of interest, requests for quotes, orders, and trades within a reasonable period of time and to provide evidence of any violations of the rules of the swap execution facility. An acceptable audit trail shall also permit the swap execution facility to track a customer order from the time of receipt through fill, allocation, or other disposition, and shall include both order and trade data.

(b) *Elements of an acceptable audit trail program—*(1) *Original source documents.* A swap execution facility’s audit trail shall include original source documents. Original source documents include unalterable, sequentially-identified records on which trade execution information is originally recorded, whether recorded manually or electronically. Records for customer orders (whether filled, unfilled, or cancelled, each of which shall be retained or electronically captured) shall reflect the terms of the order, an account identifier that relates back to the account(s) owner(s), the time of order entry, and the time of trade execution. Swap execution facilities shall require that all orders, indications of interest, and requests for quotes be immediately captured in the audit trail.

(2) *Transaction history database.* A swap execution facility’s audit trail program shall include an electronic transaction history database. An adequate transaction history database includes a history of all indications of interest, requests for quotes, orders, and trades entered into a swap execution facility’s trading system or platform,

including all order modifications and cancellations. An adequate transaction history database also includes:

- (i) All data that are input into the trade entry or matching system for the transaction to match and clear;
- (ii) The customer type indicator code;
- (iii) Timing and sequencing data adequate to reconstruct trading; and
- (iv) Identification of each account to which fills are allocated.

(3) *Electronic analysis capability.* A swap execution facility's audit trail program shall include electronic analysis capability with respect to all audit trail data in the transaction history database. Such electronic analysis capability shall ensure that the swap execution facility has the ability to reconstruct indications of interest, requests for quotes, orders, and trades, and identify possible trading violations with respect to both customer and market abuse.

(4) *Safe storage capability.* A swap execution facility's audit trail program shall include the capability to safely store all audit trail data retained in its transaction history database. Such safe storage capability shall include the capability to store all data in the database in a manner that protects it from unauthorized alteration, as well as from accidental erasure or other loss. Data shall be retained in accordance with the recordkeeping requirements of Core Principle 10 for swap execution facilities and the associated regulations in subpart K of this part.

(c) *Enforcement of audit trail requirements—*

(1) *Annual audit trail and recordkeeping reviews.* A swap execution facility shall enforce its audit trail and recordkeeping requirements through at least annual reviews of all members and persons and firms subject to the swap execution facility's recordkeeping rules to verify their compliance with the swap execution facility's audit trail and recordkeeping requirements. Such reviews shall include, but are not limited to, reviews of randomly selected samples of front-end audit trail data for order routing systems; a review of the process by which user identifications are assigned and user identification records are maintained; a review of usage patterns associated with

user identifications to monitor for violations of user identification rules; and reviews of account numbers and customer type indicator codes in trade records to test for accuracy and improper use.

(2) *Enforcement program required.* A swap execution facility shall establish a program for effective enforcement of its audit trail and recordkeeping requirements. An effective program shall identify members and persons and firms subject to the swap execution facility's recordkeeping rules that have failed to maintain high levels of compliance with such requirements, and impose meaningful sanctions when deficiencies are found. Sanctions shall be sufficient to deter recidivist behavior. No more than one warning letter shall be issued to the same person or entity found to have committed the same violation of audit trail or recordkeeping requirements within a rolling twelve month period.

#### **§ 37.206 Disciplinary procedures and sanctions.**

A swap execution facility shall establish trading, trade processing, and participation rules that will deter abuses and have the capacity to enforce such rules through prompt and effective disciplinary action, including suspension or expulsion of members or market participants that violate the rules of the swap execution facility.

(a) *Enforcement staff.* A swap execution facility shall establish and maintain sufficient enforcement staff and resources to effectively and promptly prosecute possible rule violations within the disciplinary jurisdiction of the swap execution facility.

(b) *Disciplinary panels.* A swap execution facility shall establish one or more disciplinary panels that are authorized to fulfill their obligations under the rules of this subpart. Disciplinary panels shall meet the composition requirements of part 40 of this chapter, and shall not include any members of the swap execution facility's compliance staff or any person involved in adjudicating any other stage of the same proceeding.

(c) *Hearings.* A swap execution facility shall adopt rules that provide for